

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA) CRIMINAL NO. 1:06CR427
)
)
v.) The Honorable James C. Cacheris
)
ROBERT T. SCHOFIELD,) September 28, 2012
 Defendant.)

GOVERNMENT'S REPLY TO DEFENDANT'S RULE 35 BRIEF

The United States of America, by Neil H. MacBride, United States Attorney for the Eastern District of Virginia, and Ronald L. Walutes, Jr., Assistant United States Attorney, hereby replies to the Defendant's Brief in Support of the Rule 35 Motion:

1. The parties agree that the defendant, Robert T. Schofield, has done all that has been asked of him by the government. There is no dispute between the parties that Schofield has provided substantial assistance into the investigation of those to whom he unlawfully provided immigration benefits and into the brokers who facilitated his crime.
2. The government, however, feels compelled to briefly respond to the accusations that the conduct of law enforcement's investigation into Schofield's criminal activity was sloppy and inefficient. Special Agents who believed the scope of their federal search warrant did not extend to the contents of what they believed to be an inoperable car, were not acting in bad faith or sloppy. Their initial focus upon other federal employees at the United States Citizenship and Immigration Services (concerned that others may have assisted Schofield) was appropriate to

ensure no further fraudulent documents issued after Schofield's arrest.¹ The defendant's instant motion was filed late last Friday. Government counsel was in trial before the Honorable Gerald Bruce Lee on an undercover sting the Immigration and Customs Enforcement's Homeland Security Investigations ran in this district to address the availability of green cards from a corrupt federal employee. This response was delayed as a result. To suggest that law enforcement's response to Schofield's criminal activity has been complete and this office is simply delaying placing the matter before this Court is simply inaccurate.

3. While the government is, appropriately, sometimes criticized for its response to criminal activities in the United States, the criticism rings hollow coming from the individual who committed the underlying crimes. Essentially, Schofield is now claiming he could have received his Rule 35 hearing earlier, and less damage would have been done by those to whom he sold benefits, had the government more effectively listened to his guidance and committed more resources to cleaning up after his crimes at an earlier date. This argument is offensive coming from the individual who sold the very benefits he was charged with handling. Had he not committed the crime, no law enforcement and other federal resources would have been diverted and no illegal immigrants would have entered or remained in the United States.² Criminals do not run government criminal investigations. Further, Schofield's attempts to minimize the effects of his criminal conduct (Def's Brief at paragraph 22) to suggest that the vast

¹A secretary from Schofield's office subsequently plead guilty before the Honorable Claude M. Hilton for referring to Schofield a couple cases.

²The letter from Schofield's father suggesting the aliens were already inside the United States is not accurate. Eva Zhang, the broker sentenced by Judge Brinkema discussed below, traveled with Schofield inside China soliciting clients interested in purchasing United States citizenship.

majority of the aliens were already inside the United States is inaccurate. Schofield provided fraudulent immigration benefits to far more than 175 individuals, and the “vast majority” were not in the country as legal permanent residents. In fact, a review of USCIS records reveals that over 100 of the individuals who obtained naturalization or citizenship certificates from Schofield were not legitimate permanent residents when they received their certificates, many having obtained fraudulent permanent residence from Schofield as well. Further, Schofield provided other fraudulent immigration benefits to over 200 additional individuals who were not “in the country as legal permanent residents.”

4. The determination of when to conduct the Rule 35 hearing rests with the Court. The suggestion that the government believes otherwise, explicitly made in Schofield’s brief (Def’s Brief at paragraph 27) is false. The Rule 35 motion for Schofield was filed within one year of this Court’s sentence. The government has been prosecuting brokers who assisted Schofield up to the present and on August 24, 2012, last month, Kathy Cheung, Criminal No. 1:12CR70, was sentenced by the Honorable T.S. Ellis, III. Government counsel provided to the office’s internal Rule 35 committee letters from both Robert Schofield and from his attorney. The care taken in handling this Rule 35 was not undertaken to delay this proceeding.³

Accordingly we report to this Court that Schofield has done all that we have asked and ask the Court to make a reduction appropriate to reward this cooperation while still sufficient to

³Judge Brinkema, in Schofield broker case, over the government’s and defendant’s objection, held the Rule 35 before that defendant finished her cooperation, granting only limited extensions from the Rule 35 notice also filed in that case within one year of the Court’s sentence. The government fully recognizes that the determination as to when to conduct the Rule 35 hearing rests with the Court.

deter others willing to sell their positions of public trust that so significantly impact the government's functioning.

Respectfully submitted,

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By: _____ /s/

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Government's Reply to Defendant's Rule 35 Brief was sent by email to U.S. Probation Officer Karen Moran, and that on this 26th day of September, 2012, I caused this motion to be electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following: Alan H. Yamamoto, Esquire and Fred Sinclair, Esquire, Mr. Yamamoto having been previously served on July 17, 2012 by email.

/s/

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